UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
---X
LAURA APOLONIO,

Plaintiff,

-vs.-

BRISTOL ASSOCIATES, LTD., PETER WEINTRAUB and ELLEN WEINTRAUB,

Defendants.
---X

Case No.

COMPLAINT

Plaintiff, LAURA APOLONIO, by and through her attorneys, the LAW OFFICES OF WILLIAM CAFARO, complaining of the Defendants, hereby allege as follows:

THE PARTIES

1. Plaintiff, LAURA APOLONIO, (hereinafter "Ms. Apolonio" or "Plaintiff Apolonio") is an individual residing in New York, NY.

2. Upon information and belief, Defendant BRISTOL ASSOCIATES, LTD., (hereinafter "Bristol Associates") was and is a foreign business corporation created under the laws of Delaware.

3. Bristol Associates has a principal place of business is located at 20 Morris Lane, Scarsdale, NY 10583.

4. Upon information and belief, Defendant PETER WEINTRAUB, (hereinafter "Peter") is an individual, whose actual place of business is located at 20 Morris Lane, Scarsdale, NY 10583.

5. Upon information and belief, at all times herein pertinent, Defendant Peter, served as a principal, officer and/or manager of Defendant Bristol Associates.

6. Prior to the filing of this Complaint, Defendant Peter was served with Notice pursuant to N.Y. Bus. Corp. Law § 630.

7. Upon information and belief, Defendant ELLEN WEINTRAUB, (hereinafter "Ellen") is an individual, whose actual place of business is located at 20 Morris Lane, Scarsdale, NY 10583.

8. Upon information and belief, at all times herein pertinent, Defendant Ellen, served as a principal, officer and/or manager of Defendant Bristol Associates.

9. Prior to the filing of this Complaint, Defendant Ellen was served with Notice pursuant to N.Y Bus. Corp. Law § 630.

10. Upon information and belief, for the calendar year 2014 the gross receipts of Bristol Associates, were not less than $500,000.00.

11. Upon information and belief, for the calendar year 2015 the gross receipts of Bristol Associates, were not less than $500,000.00.

12. Upon information and belief, for the calendar year 2016 the gross receipts of Bristol Associates, were not less than $500,000.00.

13. Upon information and belief, for the calendar year 2017 the gross receipts of Bristol Associates, will not be less than $500,000.00.

JURISDICTION AND VENUE

14. Jurisdiction is based upon 28 U.S.C. § 1331, insofar as it involves a statute of the United States, specifically, the Fair Labor Standards Act ("FLSA"), 29 U.S.C. §§ 201 *et seq.*, and Plaintiff relies upon 28 U.S.C. § 1367 to invoke supplemental jurisdiction with respect to the state law claims which form another basis for recovery upon the same factual nexus, specifically Articles 6 & 19 of the Labor Law and related New York State Department of Labor regulations.

15. Venue is based upon 28 U.S.C. § 1391(b)(1), insofar as at least one of the Defendants resides within this Judicial District, and (b)(2), insofar as a substantial part of the events giving rise to the within causes of action occurred in this Judicial District.

FACTUAL ALLEGATIONS

16. At all times herein pertinent, the Defendants, and each of them, were engaged in an industry having an affect on commerce within the meaning of 29 U.S.C. § 203.

17. At all times herein pertinent, and in the course of her duties, Plaintiff regularly handled products which had been moved in commerce including, but not limited to, various food items and cleaning supplies.

18. Plaintiff's primary duties did not include the exercise of discretion and independent judgment with respect to any matters of significance.

19. Bristol Associates operates as a commercial textile company.

20. Ms. Apolonio was employed by the Defendants from the calendar year of 1991 until on or about April 21, 2017.

21. Ms. Apolonio was assigned various duties including, but not limited to, cleaning and preparing food.

22. Ms. Apolonio generally worked, Wednesdays through Sundays, inclusive, from 8:00AM until 11:00PM.

23. Ms. Apolonio was paid a monthly salary of $4,100.00.

24. Plaintiff regularly worked for the Defendants in excess of forty (40) hours a week but did not receive any overtime premium of one and one half times her regular rate of pay for those hours.

25. Upon information and belief, Defendants Peter and Ellen had the power to hire employees at Bristol Associates.

26. Upon information and belief, Defendant Ellen hired Ms. Apolonio on or about the calendar year of 1991.

27. Upon information and belief, Defendants Peter and Ellen had the power to fire employees at Bristol Associates.

28. Upon information and belief, Defendant Peter fired Ms. Apolonio on or about April 21, 2017.

29. Defendants Peter and Ellen controlled the terms of the Plaintiff's employment in they would tell her what tasks to complete and on what time frame they needed to be completed.

30. Upon information and belief, Defendants Peter and Ellen controlled the work schedule of all the employees of Bristol Associates including the Plaintiff's work schedules.

31. Upon information and belief, Defendants Peter and Ellen controlled the rates and methods of payment of each of the employees of Bristol Associates, including the Plaintiff's pay rates and methods of pay.

32. At all times herein pertinent, the Plaintiff performed her duties for the Defendant Bristol Associates, at the direction and under the control of Defendants Peter and Ellen.

33. Upon information and belief, and at all times herein pertinent, Defendants Peter and Ellen, exercised close control over the managerial operations of Bristol Associates, including the policies and practices concerning employees.

34. At all times herein pertinent, Defendants Peter and Ellen controlled the terms and conditions of employment, supervised employees, made decisions as to hiring and firing and as to wages with respect to the employees of Bristol Associates in general, and with respect to the Plaintiff in particular.

35. At all times herein pertinent, Defendants Peter and Ellen acted as Plaintiff's employers within the meaning of the FLSA and the New York State Labor Law.

36. The Defendants did not create or maintain records showing the precise number of hours Plaintiff worked or of wages she earned.

37. Plaintiff alternatively allege that Defendants created records showing the number of hours Plaintiff worked and/or of wages she earned but upon information and belief, have not maintained them as required by law.

38. Defendants failed to furnish the Plaintiff with proper annual wage notices, as required by the NYLL.

39. Defendants failed to furnish the Plaintiff with a proper statement with every payment of wages, as required by the NYLL.

AS AND FOR A FIRST CAUSE OF ACTION
FEDERAL FAIR LABOR STANDARDS ACT
AGAINST THE DEFENDANTS, AND EACH OF THEM
(FAILURE TO PAY OVERTIME)

40. Plaintiff hereby incorporates all the preceding paragraphs of this complaint with the same force and effect as if fully set forth at length.

41. Defendants were required to directly pay the Plaintiff an overtime premium of one and one half times the Plaintiff's regular rate of pay for all hours worked over forty (40) in a given workweek.

42. Defendants failed to pay the Plaintiff the overtime wages to which the Plaintiff was entitled under the FLSA.

43. All of the foregoing constituted willful and repeated violations of the Fair Labor Standards Act, so the applicable statute of limitations is three years pursuant to 29 U.S.C. § 255(a).

AS AND FOR A SECOND CAUSE OF ACTION
STATE WAGE AND HOUR LAW
AGAINST THE DEFENDANTS, AND EACH OF THEM
(FAILURE TO PAY OVERTIME)

44. Plaintiff hereby incorporates all preceding paragraphs of this complaint with the same force and effect as if fully set forth at length.

45. Defendants have failed to pay Plaintiff the overtime premium of one and one half times the Plaintiff's regular rate of pay for all hours worked above forty in a given work week, to which the Plaintiff is entitled under the NYLL and the supporting New York State Department of Labor Regulations.

46. Defendants herein knowingly and in bad faith violated Articles 6 & 19 of the New York State Labor Law and supporting New York State Department of Labor regulations by failing to pay the Plaintiff overtime pay at the premium rate of one and one half times Plaintiff's regular rate of pay.

AS AND FOR A THIRD CAUSE OF ACTION
STATE WAGE AND HOUR LAW
AGAINST THE DEFENDANTS, AND EACH OF THEM
(FAILURE TO PAY SPREAD OF HOURS)

47. The Plaintiff hereby incorporates all preceding paragraphs of this complaint with the same force and effect as if fully set forth at length.

48. Defendants have willfully failed to pay Plaintiff additional compensation of one hour's pay at the basic minimum wage rate for each day that the length of the interval between the beginning and end of the Plaintiff's work day, including working time plus time off for meals plus intervals off duty, has been greater than 10 hours.

49. Through their knowing or intentional failure to pay Plaintiff spread of hours pay, Defendants have willfully violated the NYLL, Article 19, §§ 650 *et seq*., and the supporting New York State Department of Labor Regulations.

AS AND FOR A FOURTH CAUSE OF ACTION
NEW YORK STATE LABOR LAW
AGAINST THE DEFENDANTS, AND EACH OF THEM
(FAILURE TO PROVIDE ANNUAL WAGE NOTICES)

50. Plaintiff hereby incorporate all preceding paragraphs of this complaint with the same force and effect as if fully set forth at length.

51. Defendants have willfully failed to furnish the Plaintiff with annual wage notices as required by NYLL, Article 6, § 195(1), in English or in the language identified by each employee as their primary language, at the time of hiring, and on or before February first of each subsequent year of the employee's employment with the employer, a notice containing: the rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; allowances, if any, claimed as part of the minimum wage, including tip, meal, or lodging allowances; the regular pay day designated by the employer in accordance with NYLL, Article 6, § 191; the name of the employer; any "doing business as" names used by the employer; the physical address of the employer's main

office or principal place of business, and a mailing address if different; the telephone number of the employer; plus such other information as the commissioner deems material and necessary.

52. Through their knowing or intentional failure to provide the Plaintiff with the annual wage notices required by the NYLL, Defendants have willfully violated NYLL, Article 6, §§ 190 et seq., and the supporting New York State Department of Labor Regulations.

AS AND FOR A FIFTH CAUSE OF ACTION
NEW YORK STATE LABOR LAW
AGAINST THE DEFENDANTS, AND EACH OF THEM
(FAILURE TO PROVIDE WAGE STATEMENTS)

53. Plaintiff hereby incorporates all preceding paragraphs of this complaint with the same force and effect as if fully set forth at length.

54. Defendants have willfully failed to furnish the Plaintiff with statements with every payment of wages as required by NYLL, Article 6, § 195(3), listing: the dates of work covered by that payment of wages; name of employee; name of employer; address and phone number of employer; rate or rates of pay and basis thereof, whether paid by the hour, shift, day, week, salary, piece, commission, or other; gross wages; deductions; allowances, if any, claimed as part of the minimum wage; net wages; the regular hourly rate or rates of pay; the overtime rate or rates of pay; and the number of regular and overtime hours worked.

55. Through their knowing or intentional failure to provide the Plaintiff with the wage statements required by the NYLL, Defendants have willfully violated NYLL, Article 6, §§ 190 et seq., and the supporting New York State Department of Labor Regulations.

WHEREFORE, Plaintiff prays for judgment as against the Defendants, and each of them, as follows:

a) awarding back pay for overtime pay due and owing to the Plaintiff;

b) awarding back pay for spread of hours pay due and owing to the Plaintiff;

c) Declaring that Defendants violated the provisions of the NYLL relating to notice and record keeping requirements regarding employees, and awarding Plaintiff statutory damages and any other relief authorized under the NYLL for violations of those requirements;

d) awarding liquidated damages pursuant to 29 U.S.C. § 216(b) and/or New York State's Labor Law, Articles 6 & 19, §§ 198(1-a), 663(1);

e) awarding the costs and disbursements of this action, along with reasonable attorney's fees pursuant to 29 U.S.C. § 216(b) and/or New York State's Labor Law, Articles 6 & 19, §§ 198(1-a), 663(1);

f) awarding any other relief this Court deems just, proper and equitable.

Dated: New York, New York
August 31, 2017, 2017

Respectfully submitted,
LAW OFFICES OF WILLIAM CAFARO

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File No.: 52946

To:

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20 Morris Lane
Scarsdale, NY 10583

PETER WEINTRAUB
20 Morris Lane
Scarsdale, NY 10583

ELLEN WEINTRAUB
20 Morris Lane
Scarsdale, NY 10583

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COMPLAINT

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